IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Mr. S.B. Ganguly & ors. Versus Devendra Kumar & Anr.

S.B. Criminal Misc. Petition No. 985/2002
against the order dated 10-10-2002 passed
by the Chief Judicial Magistrate, Bikaner, in
Final Report No.144/2001, FIR No.344/2001.

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Date of Order: December 18, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

None present for the petitioners.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
None present for the non-petitioner No.1 though served.

BY THE COURT:

No one appears for the petitioners and the non-petitioner No.1 despite repeated calls.

By the instant criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter), the petitioners have challenged the order dated 10-10-2002 passed by the Chief Judicial Magistrate, Bikaner (for short, "the trial Court" hereinafter), whereby the trial Court took cognizance of the offences under Sections 420, 406 and 120-B, IPC and issued process against the petitioners.

I have carefully gone through the memo of the criminal miscellaneous petition, as also the record of the trial

Court.

The facts and circumstances giving rise to the instant criminal miscellaneous petition are that a complaint was filed by the non-petitioner No.1 before the trial Court against the present petitioners for the offences under Section 420, 406 and 120-B, IPC. The trial Court sent the complaint for investigation under Section 156 (3) of the Code to the Station House Officer, Police Station, Kot Gate, Bikaner. However, after investigation, the police filed the negative Final Report. On a notice to the complainant/non-petitioner No.1, he filed a protest petition. The trial Court recorded the statement of the complainant/non-petitioner No.1 under Section 200 of the Code, as also the statements of the witnesses, viz. Vikramjeet, Shiv Kumar alias Pappu, Shyam and Heera Lal, produced by him under Section 202 of the Code. On perusal of the material placed before it, the trial Court came to the conclusion that prima facie there is ground to proceed against the petitioners for the aforesaid offences and accordingly took the cognizance of the offences and issued the process.

On careful perusal of the statements of the complainant and the witnesses produced by him, particularly the statement of the complainant/non-petitioner No.1, in my view, the trial Court was justified in arriving at the conclusion that prima facie there are grounds to proceed against the petitioners.

At the time of taking the cognizance, the Court is required to see whether there is prima facie evidence to proceed, and not whether the evidence is sufficient to hold the conviction.

It is settled law that on filing a negative Final Report by the police, it is open to the Court either to accept or reject the same and form its independent opinion as to whether any offence is made out. I am fortified with my view by the decisions of the Hon'ble Supreme Court in M/s. India Carat Pvt. : Ltd. Vs. State of Karnataka & Anr., AIR 1989 SC 885; and Gangadhar Janardan Mhatre Vs. State of Maharashtra & ors., (2004) 7 SCC 768.

In a recent decision of the Hon'ble Supreme Court in Jagdish Ram Vs. State of Rajasthan, AIR 2004 SC 1734, the Hon'ble Supreme Court held that at the stage of taking cognizance, the Magistrate has only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The Apex Court further held that investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding, and not whether there is sufficient ground for

conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

Keeping in view the decisions of the Hon'ble Supreme Court, in my view, the trial Court was justified in taking cognizance of the offences and issuing process against the petitioners. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of the Court. It is settled law that the power under Section 482 of the Code are to be exercised sparingly and in exceptional cases. Instant is not a case of that nature.

I do not find any merit in the criminal revision petition and it is dismissed accordingly. The record of the trial Court be returned forthwith.

(H.R. PANWAR), J.

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